

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:12-cv-318**

**DAVID WATKINS and MAUREEN
WATKINS,**

Plaintiffs,

vs.

**SOPREMA, INC. an Ohio Corporation
doing business in N.C.; and
ELASTIKOTE, LLC, an Ohio Limited
Liability Company,**

Defendants.

ORDER

THIS MATTER is before the Court *sua sponte* to ascertain subject matter jurisdiction.

The defendant Elastikote, LLC removed this action from state court based upon diversity jurisdiction (#1). In the Complaint, plaintiff alleges as follows: “The Defendant Elastikote, LLC hereinafter (Elastikote) is a limited liability company in Ohio and has been doing business in Transylvania County, North Carolina.” (Comp. ¶3)

Courts have an affirmative duty to question subject matter jurisdiction even when the parties have not done so. Interstate Petroleum Corp. v. Morgan, 249 F.3d 215 (4th Cir. 2001); Plyer v. Moore, 129 F.3d 728, 732 n.6 (4th Cir. 1997),

certiorari denied 524 U.S. 945, 118 S.Ct. 2359, 141 L.Ed.2d 727 (1998); 28 U.S.C. §1447(c)("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."). A limited liability company is a citizen of all states in which its constituent members are citizens. Carden v. Arkoma Associates, 494 U.S. 185, 110 S.Ct. 1015, 108 L.Ed.2d 157 (1990). In the Notice of Removal, the Defendant Elastikote states, "Removing Defendant as a single member limited liability company whose sole member is a corporation incorporated under the laws of Ohio with its principal place of business in Ohio." Such a disclosure is not sufficient and the Defendant will have to disclose the name of all constituent members or partners and to identify their citizenship.

IT IS, THEREFORE, ORDERED that on or before December 10, 2012, the Defendant Elastikote, LLC shall file a response disclosing the names and citizenships, if any, of all the constituent members or partners of the above referenced LLC, and, for any such constituent members or partners that are limited liability companies or partnerships, to identify the citizenships of the respective constituent members or partners until all such constituents are fully identified.

Signed: November 19, 2012

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

